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JUL 19 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, D.C. 20554

Re: Petition for Expedited Rulemaking and Motion to Waive the
Comment Period on Petition for Expedited Rulemaking

Dear Mr. Caton:

Enclosed please find an original and twelve (12) copies of (1) a Petition for Expedited Rulemaking and (2) a Motion to Waive the Comment Period on Petition for Expedited Rulemaking filed by The American Public Communications Council and 22 state associations of independent public payphone providers. Please file the original and return a copy, which should be stamped with the date of filing and returned to me in the enclosed stamped, addressed envelope.

If you have any questions, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely,



Albert H. Kramer

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF PETITION OF THE)
AMERICAN PUBLIC COMMUNICATIONS COUNCIL)
AND STATE PAYPHONE ASSOCIATIONS)
TO INITIATE, ON AN EXPEDITED BASIS,)
A RULEMAKING PROCEEDING TO AMEND)
SECTION 64.1301 OF THE COMMISSION'S)
REGULATIONS TO ESTABLISH PER-CALL)
COMPENSATION OF INDEPENDENT PUBLIC)
PAYPHONE PROVIDERS FOR ACCESS CODE CALLS)

RM _____

PETITION FOR EXPEDITED RULEMAKING

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Communications Council and State
Associations

Dated: July 19, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
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RM _____

PETITION FOR EXPEDITED RULEMAKING

The American Public Communications Council ("APCC"), and the state associations of independent public payphone ("IPP") providers listed on the signature page, pursuant to section 1.401 of the regulations of the Federal Communications Commission ("Commission"), 47 CFR § 1.401, hereby request that the Commission initiate, on an expedited basis,¹ a rulemaking proceeding to amend Section 64.1301 of the Commission's regulations, 47 CFR § 64.1301, to establish per-call compensation of independent public payphone ("IPP") providers² for access code calls. Under the proposed rule,

¹ Petitioners are filing, concurrently with this petition, a motion to waive the comment period before issuance of the Notice of Proposed Rulemaking.

² In this petition, Petitioners use the term "IPP providers" instead of other terms such as competitive payphone owners ("PPOs") or customer-owned coin-operated telephone ("COCOT") providers. Petitioners believe that the term "IPP providers" more accurately reflects that these payphone owners are not affiliated with the local exchange carriers ("LECs") or American Telegraph and Telephone Company ("AT&T"). However, in using this term Petitioners do not intend any change in the scope of the entities entitled to compensation.

section 64.1301 would be amended to provide that interexchange carriers ("IXCs") designated by the Commission shall compensate IPP providers on a per-call basis. Petitioners propose that the Commission prescribe a compensation rate of 25 cents (\$.25) for each access code call. Petitioners further propose that the Commission initially require participation in the per-call mechanism by IXCs with annual toll revenues exceeding \$1 billion.³ Such per-call compensation would be paid by those IXCs in lieu of their obligations under the existing flat-rate-per-month compensation system.

Because the Commission is committed to implementing a per-call method of dial-around compensation, and because a per-call mechanism is feasible now, Petitioners believe that a rule prescribing per-call compensation should be effective January 1, 1995. In this regard, Petitioners respectfully request that the Commission issue a Notice of Proposed Rulemaking ("NPRM") and expedite adoption of a final rule.

SUMMARY

The Commission has repeatedly emphasized its commitment to establishing a usage-based dial-around compensation mechanism as soon as such a mechanism is feasible. In this petition, Petitioners propose a per-call mechanism to compensate IPP providers for originating interstate access code calls, that is,

³ The proposed rule provides, however, that any IXC required to pay compensation may elect to pay such compensation on a per-call basis.

10XXX, 950, and 1-800 access code calls (including such recent access code dialing sequences as 1-800-CALL-ATT, 1-800-COLLECT, and 1-800-OPERATOR).⁴

Under the per-call compensation mechanism proposed herein, participating IXCs would track all "07"-coded⁵ 10XXX and 1-800 access code calls received from equal access areas⁶ and would match those calls to the existing data base of originating IPPs.⁷ The IXCs can track these calls because each 1-800 and 10XXX access code call is transmitted to the IXC with the specific automatic number identification ("ANI"), which indicates the billing number of the call-originating IPP.

Petitioners propose that, initially, IXCs with more than \$1 billion annual toll revenue should be required to pay per-call compensation while other IXCs may elect to do so. The Commission should begin a separate proceeding to determine whether other IXCs are capable of paying compensation on a per-call basis.

⁴ As noted below, APCC and AT&T have agreed to implement per-call compensation, with AT&T paying 25 cents for each interstate and intrastate access code call placed at an IPP. See Attachment 2 (press release).

⁵ "07" is a screening code that accompanies the automatic number identification ("ANI") on calls originating from IPPs.

⁶ In non-equal access areas, the local exchange carrier ("LEC") does not transmit the ANI to the IXC. It is Petitioners' belief that less than 5% of IPPs are located in non-equal access areas. Petitioners recommend that in non-equal access areas the existing flat-rate system continue in effect without change.

⁷ The per-call compensation mechanism described in this petition is essentially the same as that which will be used by AT&T upon grant of AT&T's petition for waiver in which AT&T seeks leave to pay 25 cents per dial-around call in lieu of its pro rata portion of the \$6.00 per-phone per-month flat fee.

Some IXC's continue to use 950 access codes, which cannot be easily tracked now, for a small percentage of their access code calls. For these calls, the Commission should prescribe the use of reliable surrogates. Unless the affected IXC's offer better surrogates, the Commission should prescribe surrogates based on actual station message detail recording ("SMDR") data obtained from IPPs. The SMDR data can be used to determine each IXC's average ratio of 950 access code calls to 10XXX and 1-800 access code calls. Once an average ratio has been established by the Commission for each IXC that uses 950 access codes, the number of 950 access code calls originating from each IPP during any given compensation period can be attributed by each IXC based on the actual number of 10XXX and 1-800 dial-around calls originating from the IPP.

Petitioners propose that IPP providers be compensated at a rate of 25 cents per call for each access code call. Although Petitioners believe that a higher dial-around compensation rate is justified, Petitioners believe that a per-call compensation rate, one admittedly at the lower reaches of the zone of reasonableness, may reasonably be set at 25 cents per call. Petitioners are willing to support this rate in order to expedite implementation of a comprehensive system of per-call compensation.

A per-call mechanism can be implemented now. Furthermore, AT&T and APCC have agreed to implement a per-call rate and a compensation mechanism as described herein. In light of the above, Petitioners urge the Commission to immediately institute a

rulemaking to expeditiously adopt the rule proposed herein and to authorize, effective January 1, 1995, the per-call compensation plan described in this petition.

I. THE PETITIONERS REPRESENT THE IPP INDUSTRY

APCC is a national trade association made up of more than 250 independent (non-telephone company) providers of pay telephone and public communications equipment, services, and facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications.

APCC has actively participated in numerous FCC proceedings affecting the pay telephone industry, including the proceedings that led to the establishment of a system of access code compensation.

APCC is joined in this petition by twenty-three leading state and regional trade associations representing the IPP industry in their respective states: Alabama Payphone Association, Arizona Payphone Association, California Payphone Association, Central Atlantic Payphone Association (Pennsylvania), Empire State Payphone Association (New York State), Florida Public Telephone Association, Georgia Public Communications Association, Independent Payphone Association of New York, Indiana Payphone Association, Iowa Payphone Association, Louisiana Payphone Association, Michigan Payphone Association, Minnesota Independent Payphone Association, Mississippi Public Communications Association, Nevada Payphone Association, New Jersey Payphone Association, New Mexico Payphone

Association, North Carolina Payphone Association, Northwest Payphone Association (Idaho, Oregon, and Washington State), Ohio Public Communications Association, South Carolina Payphone Association, Texas Payphone Association, and the Utah Payphone Association. These associations actively represent IPP providers before state public service commissions on diverse matters affecting the payphone industry, including compensation for "dial-around" calls.

Together, APCC and the listed state associations represent some 1200 IPP providers and account for more than 60% of the 300,000 IPPs in the United States.

II. A PER-CALL COMPENSATION RATE CAN AND SHOULD BE IMPLEMENTED NOW

A. The Commission Is Committed To Implementing A Per-Call Mechanism For Dial-Around Compensation

The Commission has repeatedly expressed its commitment to implementing a per-call mechanism to compensate IPP providers for the use of their payphones to make access code calls. Prior to 1992, IPP providers only received revenue from coin payments for local calls, resold "1+" toll calls, and commissions paid by the IPP provider's presubscribed operator service provider ("OSP"); IPP providers received no compensation when a caller initiated an access code call. Congress recognized the inequity of IPP providers not being compensated for initiating calls to callers' preferred OSPs and in 1990 enacted the Telephone Operator Consumer Services Improvement Act ("TOCSIA"), Pub. L. No. 101-435, 104 Stat.

986 (1990) (codified at 47 U.S.C. § 226). Among other things, TOCSIA required that the Commission address the need of IPP providers to receive compensation for access code calls originated from IPPs.

In 1991, the Commission concluded that IPP providers should be compensated for dial-around calls. Specifically, the Commission concluded:

[C]onsiderations of equity require us to prescribe compensation. The Operator Services Act and our rules require that payphone owners allow consumers to use payphone equipment for access code calls. By providing the equipment through which the consumer initiates calls to the OSP of choice, the payphone owner is benefiting the public but is not guaranteed any revenue for access code calls. In addition, the payphone owner must expend financial resources to maintain the equipment. It is only fair that these costs be shared by consumers who benefit from the ability to make access code calls and by OSPs who derive revenue from the calls.

Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4745-46 (1991) ("Compensation Order").

From the outset, the Commission has endorsed a usage-based system for dial-around compensation, and the type of mechanism it has focused on is a per-call mechanism. Id. In the Compensation Order, the Commission tentatively concluded that a per-call charge was the most preferable compensation mechanism.⁸ Subsequently, the Commission reported: "All of the commenters addressing this issue

⁸ The Commission concluded that "a per-call charge would be preferable to a per minute charge because a per call charge would allow simplified accounting and monitoring methods." Id.

support our tentative conclusion that a per-call rate is preferable to other types of rates." Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Second Report and Order, CC Docket No. 91-35, 7 FCC Rcd 3251, 3252 (1992) (emphasis added) ("Rate Order"). The industry consensus supporting, and Commission commitment to implementing, a per-call compensation mechanism is only logical, since a per-call compensation mechanism would further important Commission goals:

[C]ompensating PPOs on a per-call basis for access code calls would have the benefit of creating greater incentives for PPOs to place their payphones in locations that generate the most interstate traffic

Rate Order, 7 FCC Rcd at 3252-53.

When dial-around compensation was originally prescribed, however, no party suggested a feasible approach to implementing per-call compensation which the Commission found acceptable. As a result, the Commission prescribed dial-around compensation, but reluctantly postponed implementation of a per-call mechanism. Specifically, the Commission prescribed an interim, flat-rate of \$6.00 per phone per month so that IPP providers could receive dial-around compensation as soon as possible:

A per-phone mechanism represents an adequate substitute at this time for per-call compensation. A per-phone system can be implemented quickly and at relatively little cost. In addition, it should be relatively easy to administer once it is in place.

Rate Order, 7 FCC Rcd at 3253.

The Commission emphasized that per-phone compensation was being prescribed on "on an interim basis." Rate Order, 7 FCC Rcd at 3152; id., Separate Statement of Commissioner Andrew C. Barrett,

at 3263 ("I do believe that a per-call mechanism is a more cost-based solution and has the advantage of offering better incentives in terms of the placement of payphones."). Subsequently, in 1993 the Commission reinforced the position that the flat rate compensation scheme was in no way a permanent solution to the IPP providers' need for dial-around compensation. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-35, 8 FCC Rcd 7151, 7157 (1993) ("Rate Reconsideration Order") ("We continue to believe that a per-call compensation mechanism is preferable to a flat fee per-phone").

In the Rate Order, the Commission expressed a commitment to initiate a new proceeding to implement a per-call compensation mechanism:

While we cannot order per-call compensation at this time, we direct the Chief, Common Carrier Bureau, to continue to consult with the industry to explore whether and how a per-call compensation mechanism might be implemented in the future. If and when sufficient progress is made in this area, we will initiate a new proceeding to make appropriate changes in the compensation mechanism and rate that we adopt herein.

Rate Order, 7 FCC Rcd at 3253 (emphasis added).

B. Per-Call Compensation Is Feasible Now

The Commission "expect[ed] cooperation from all parties in working towards establishing a per-call compensation mechanism." Rate Reconsideration Order, 8 FCC Rcd at 7157. In this regard, the Staff held a series of meetings with interested parties to explore

implementation of a per-call mechanism.⁹ What emerged from those discussions was that the parties, at that time, could not reach a consensus on implementation of per-call compensation. There were two main difficulties. First, there was no consensus on how to handle call tracking, in particular the problem of tracking 950 calls. Second, the parties were far from agreement on an acceptable per-call rate.

Since the industry meetings, APCC and AT&T have continued, both in concert and independently, to investigate the per-call issue. The results of these efforts have removed the obstacles to implementing per-call compensation.

First, APCC and AT&T have agreed to a mechanism for implementing per-call compensation. This mechanism is based on tracking of 10XXX and 1-800 access code calls, which should be feasible for each of the major IXCs.

Second, APCC has further explored the 950 issue. In so doing, APCC has reviewed SMDR data from hundreds of payphones. APCC's investigation discloses that 950 calls represent a very small part -- less than 10% -- of the total number of dial-around calls: 950 calls even represent a minor percentage of the dial-around calls received by those IXCs that utilize 950 access. Furthermore, SMDR data on 950 calls enables the development of a surrogate. As a result, 950 dial-around calls do not now present an impediment to implementing a per-call compensation mechanism.

⁹ See, e.g., Letter from Albert H. Kramer to Donna Searcy, CC Docket No. 91-35 (Feb. 22, 1993) (reporting ex parte meeting of APCC, AT&T, Bellcore, MCI, and Staff on February 10, 1993).

Third, APCC and AT&T have agreed on a per-call compensation rate: AT&T is willing to pay, and the Petitioners are willing to accept, a twenty-five cent 25 cent per call rate. This rate can and should be prescribed as a generally applicable rate of per-call compensation.

As a result of these developments, the obstacles to implementing per-call compensation have been removed.¹⁰ Therefore, Petitioners are now requesting that the Commission institute a rulemaking to amend section 64.1301 of the Commission's regulations so that the other major IXC's also utilize a per-call compensation mechanism.

As explained below, "sufficient progress" has been made on developing a per-call system: the overwhelming majority of dial-around calls can be tracked, and reliable surrogates can be used to address 950 calls.

¹⁰ APCC is working on developing a system that would allow IPP providers to use SMDR to efficiently track all dial-around calls. However, at least three problems must be overcome in order to implement a per-call tracking mechanism in IPPs. First, most existing IPPs do not have detailed SMDR capability for tracking dial-around calls. Second, an IPP cannot determine whether a call is intrastate or interstate because even those IPP providers with sophisticated SMDR cannot record the ultimate destination of most types of dial-around calls. Third, IPPs are unable to determine precisely whether an access code call has been completed because LECs generally do not provide answer supervision to IPPs. Since existing IXC capabilities are sufficient to track the vast majority of calls, the Commission should move to a per-call system now, without further delay.

III. HOW THE PER-CALL MECHANISM WOULD WORK

A. Call Tracking

In order to implement any per-call compensation mechanism, dial-around calls must be tracked and attributed to the originating IPPs. The overwhelming majority of access code calls, that is, 10XXX and 1-800 calls, can be tracked by the IXC's that carry the calls because the IXC's receive ANI and two additional coding digits (called "ANI Information" or "II" digits) for most dial-around calls.¹¹

The ANI is the billing number for a call; in the case of IPPs, the ANI is virtually always the same as the line number. Furthermore, the ANI from IPPs is generally accompanied by the ANI II digits "07." The "07" code, which is also used for a few other classes of originating lines, can be used by the IXC's to mark calls originating from ANIs with the "07" code for special billing treatment. Later, the IXC's can match up the ANIs marked for special billing treatment with the existing database of IPP ANIs.¹² Thus, the ANI and the coding digits can be used to track access code calls. As a result, the IXC can sort the calls according to ANI, thereby recording the number of calls received by the IXC from

¹¹ See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order on Further Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 91-35, 8 FCC Rcd 2863 (1993) (pending proceeding concerning originating line screening and ANI digits).

¹² Under the current dial-around compensation system, the LECs provide a listing of IPP ANIs. See 47 CFR § 64.1301(e). These lists permit the IXC's to check the dial-around compensation bills rendered by the IPP providers.

each IPP.

In the per-call system proposed by the Petitioners, the IXC's subject to the rule will track the access code calls they receive from each IPP. They will pay the rate set by this Commission for each 10XXX and 1-800 access code call. Those IXC's that receive 950 calls that they are unable to track on a per-call basis would pay dial-around compensation for 950 calls based on the number of 950 calls according to calculations described below.

IPPs that are "presubscribed" -- i.e., under contract for 0+ calls -- to an IXC would also receive per-call access code compensation from that IXC. IXC's currently are required to pay flat-rate dial-around compensation for all IPPs, including those IPPs presubscribed to the IXC. Therefore, it is appropriate to also require IXC's to pay per-call access code compensation for all IPPs, including presubscribed IPPs. To the extent that carriers perceive a need to adjust their presubscription contracts to reflect the change to per-call compensation for access code calls, such adjustments can be addressed in the marketplace by individual IXC's and IPP providers.

B. IXC's That Would Be Subject To The Per-Call Rule

Petitioners are not requesting that the Commission modify the criteria for IXC's that are required to pay dial-around compensation.¹³ However, in order to facilitate implementation of

¹³ Section 64.1301(b), in pertinent part, provides:

The compensation shall be paid by interexchange carriers

the per-call mechanism, Petitioners propose that the Commission initially require only those IXCs whose toll revenues exceed \$1 billion to pay dial-around compensation on a per-call basis.¹⁴ For purposes of implementation of this rulemaking, it is logical to distinguish between these IXCs and smaller IXCs. IXCs with more than \$1 billion in revenue should have the wherewithal to comply with the rule: there is little doubt that these IXCs, which account for approximately 88% of IXCs' toll revenue, have the capability to track access code calls and match the calls to the originating IPP.

Under a perfect per-call mechanism, all IXCs that receive dial-around calls would be required to pay dial-around compensation. There is merit to requiring all IXCs receiving dial-around calls to participate in the per-call compensation system, but initially requiring only the larger IXCs to pay per-call compensation will advance the Commission most of the way to its goal of per-call compensation. Petitioners urge the Commission to permit IXCs with less than \$1 billion annual toll revenue, at

(IXCs) that both:

(1) earn annual toll revenues in excess of \$100 million, as reported in the FCC staff report entitled "Long Distance Market Shares;" and

(2) provide live or automated operator services.

47 CFR § 64.1301(b).

¹⁴ As noted above, AT&T intends to file a petition for waiver of section 64.1301 so that AT&T can begin paying per-call compensation even before the rulemaking process is completed.

their option, to elect to pay dial-around compensation on a per-call basis in lieu of continuing to pay the individual IXC's pro rata portion of the flat rate.¹⁵

The Commission should also begin proceedings to enlarge the group of IXCs that are required to pay dial-around compensation on a per-call basis. The rule proposed herein allows for additional IXCs to be designated by Commission order as subject to the per-call mechanism. At the same time as it orders the larger IXCs to begin paying per-call compensation, the Commission should begin a separate proceeding to determine whether there is any impediment to requiring other IXCs that receive access code calls to begin paying compensation on a per-call basis.

C. 950 Access Code Compensation Methodology

As a general rule, only calls using a 950 access code currently cannot be tracked on a per-call basis. These 950 calls are completed using Feature Group B. Unlike the access services used for 1-800 or 10XXX access code calls, only some specially modified versions of Feature Group B provide ANI. Thus, IXCs receiving 950 dial-around calls generally cannot track them on a per-call basis.

Of the larger IXCs, only two -- MCI and LDDS -- promote 950

¹⁵ At this time, Petitioners are not asking the Commission to reexamine the level of the flat rate. However, Petitioners reserve the right to do so. For example, after the instant rulemaking is implemented, and the larger IXCs have experience operating a per-call compensation mechanism and sufficient data is accumulated, it may be appropriate to reexamine the level of the flat rate.

access code calling, and even these IXCs receive a relatively small portion of their dial-around calls from 950 access. Petitioners believe that AT&T and Sprint do not receive any 950 access code calls. An IXC's current inability to track a relatively small portion of its access code calls is not an insurmountable obstacle to implementation of a per-call mechanism. A reliable surrogate for 950 calls can be developed based on the actual data available from tracking other calls.¹⁶

It makes sense to rely on usage-based surrogates to develop a per-call mechanism for 950 calls. Usage-based surrogates can be derived from current market conditions. As market conditions change, the surrogates can also change. The result is that a compensation methodology constructed with the aid of usage-based surrogates will further the Commission's goals of rationally allocating compensation obligations and enhancing IPP providers' incentives to place payphones in locations where calling is heavier.

To calculate an IXC's dial-around compensation obligation for its 950 calls, the first step is to collect sample data on the use of 950 and other access codes to reach that IXC. The next step is to divide the number of the IXC's 950 calls in the sample by the total number of the IXC's trackable (10XXX and 1-800) access code

¹⁶ In the existing system, the Commission has used surrogates to compensate IPP providers for all dial-around traffic. There is no valid reason why the Commission cannot now use surrogates to compensate IPP providers for residual dial-around traffic that cannot be tracked on a per-call basis.

calls in the sample. This gives a number representing the estimated ratio of the IXC's 950 access code calls to its trackable access code calls.

To estimate MCI's 950 call ratio, APCC collected data from five different IPP providers. The IPPs in the samples are located in diverse states.¹⁷ The five studies reveal that the median ratio of MCI's 950 calls to MCI's 10XXX and 1-800 non-subscriber calls is 0.21. The mean of the five ratios is 0.21. Accordingly, APCC's studies indicated that the ratio of MCI's 950 calls to its 10XXX and 1-800 non-subscriber calls is approximately 0.21. (About one in every six MCI access code calls is 950.) Using this ratio, the number of 950 access code calls carried by MCI from each payphone during any given compensation period can be attributed based on the actual recorded number of 10XXX and 1-800 dial-around calls MCI receives from each payphone.

APCC proposes that the Commission find that the ratio of MCI's 10XXX and 1-800 non-subscriber calls to MCI's 950 calls is 0.21. This 0.21 ratio would be used in each compensation period to project the number of 950 calls received by MCI from each IPP. If there are, for example, 20 dial-around calls made at an IPP via MCI's 10XXX and 1-800 access codes, then there are a projected 4.2 calls made on MCI's 950 access code at the IPP ($20 \times .21 = 4.2$). Based on a 25 cents per-call rate, MCI would pay $4.2 \times .25$ or \$6.05 for that IPP. This calculation would be performed for each

¹⁷ The results of the studies are provided in Attachment 3 to this petition.

IPP at the end of each compensation period.¹⁸

Using similar procedures, a 950 adjustment factor can be established for LDDS. To estimate LDDS' 950 call ratio, APCC collected data from more than 500 payphones operated by a multistate IPP provider.¹⁹ Studies of these data indicate that the ratio of LDDS's 950 access code calls to its other access code calls is approximately .30. (About one in four LDDS' access code calls is 950.) Using this ratio, as with MCI, the number of 950 access code calls carried by LDDS from each payphone during any given compensation period can be attributed based on the actual recorded number of 10XXX and 1-800 dial-around calls.

APCC proposes that the Commission find that the ratio of LDDS's 10XXX and 1-800 non-subscriber calls to LDDS's 950 calls is 0.30. As with MCI, this 0.30 ratio would be used in each compensation period to project the number of 950 calls received by LDDS from each IPP. If there are, for example, 10 dial-around calls made at an IPP via LDDS's 10XXX and 1-800 access codes, then there are a projected 3.0 calls made on LDDS's 950 access code at the IPP ($10 \times .30 = 3.0$). Based on a 25 cents per-call rate, LDDS would pay $3 \times .25$ or \$3.25 for the IPP. As with MCI, this calculation would be performed for each IPP (or each IPP provider)

¹⁸ Alternatively, the calculation could be performed once for each IPP provider at the end of each compensation period, based on the traffic at all of the IPP provider's payphones during the compensation period. Either way, the resulting payment to the IPP provider would be the same.

¹⁹ Due to LDDS's relatively recent growth, most of the IPP providers consulted did not have usable SMDR data on access code calling utilizing LDDS.

at the end of each compensation period.

As illustrated above, a reliable surrogate for an IXC's 950 calls can be developed based on the actual data available from tracking dial-around calls.²⁰ Accordingly, there is no valid reason that prevents the Commission from fulfilling its commitment to implement a per-call compensation mechanism.

D. Range of Reasonable Compensation Rates

Petitioners urge the Commission to prescribe a compensation rate of 25 cents per dial-around call.²¹ When the Commission initially set the interim rate for dial-around compensation at \$6.00 per-phone per-month, the Commission recognized that it is necessary to rely on surrogates and benchmarks, rather than a precise rate-setting methodology. Accordingly, the Commission used several approaches to establish a "range of reasonable compensation rates." See, e.g., Rate Reconsideration Order, 8 FCC Rcd at 7151-52.

There is nothing new or innovative about the Commission's crafting a rate within a zone of reasonableness: "Ratemaking under the 'just and reasonable' standard involves . . . selecting an

²⁰ APCC believes that its data provide an adequate basis for projecting 950 traffic for purposes of establishing a per-call system that is superior to the existing system. If an IXC believes it has better data, it can submit such data for consideration by the Commission.

²¹ As discussed below, a 25 cent per-call rate is at the lower reaches of the zone of reasonableness in a presubscription environment. However, in an environment where the number of presubscribed calls is substantially lower than it is now, a 25 cent per-call rate would not be reasonable.

appropriate rate within a broad 'zone of reasonableness' established by judicial standards." Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers, 5 FCC Rcd 197, 201 (1989) (footnotes omitted). Specifically, the Commission explained:

Ratemaking is prospective. It is not an exact science. It involves both quantitative and qualitative judgments and predictions of the future. Courts have repeatedly observed that "neither law nor economics has yet devised generally accepted standards for the evaluation of ratemaking orders,"

Id. (footnotes omitted). Accordingly, the Commission is "allowed wide latitude to choose methods and procedures for determining rates . . . and to make pragmatic adjustments called for by particular circumstances." Id. (footnote omitted); United States v. FCC, 707 F.2d 610, 618 (D.C. Cir. 1983).

In the Rate Order, the Commission used several surrogates to calculate essentially a 40 cents rate for each of the 15 projected interstate access code calls. 7 FCC Rcd at 3256-57. APCC believes that the true value of a dial-around call received by an IXC is substantially more than 40 cents. Nevertheless, to expedite implementation of a comprehensive per-call compensation mechanism, Petitioners support the 25 cents per-call rate for calls actually measured.²²

The proposed compensation rate is at the lower end of the "zone of reasonableness." This relatively low rate will tend to

²² Under AT&T's agreement with APCC, AT&T will pay 25 cents per call on intrastate as well as interstate access code calls. See Attachment 2.

(1) reduce or eliminate the need to rely on surrogates and (2) move the industry toward a more efficient system of compensation.

E. Payment Mechanism For Per-Call Compensation

The payment system for per-call dial-around compensation can build upon the existing system for paying flat-rate dial-around compensation. Under the existing system, each IPP sends each IXC, on a quarterly basis, a statement identifying its payphones. The IXC is billed for its share of the total flat-rate compensation to which the IPP is entitled, based on the formula adopted by the Commission. The various IXCs are able to verify the identity of IPPs by utilizing the IPP line data provided by LECs.

In the per-call compensation system, as in the flat-rate system, IPP providers will continue to send the IXC, on a quarterly basis, a statement identifying its IPPs. The IXCs will continue to match the IPP statements against the quarterly lists of IPPs provided by LECs. The main difference is that, under the per-call system, the IXC will send back to the IPP, along with its remittance, a statement indicating the number of 10XXX and 1-800 calls made to the IXC from each IPP line number. As explained earlier, this information can be developed by each IXC based on the ANI (and other information) transmitted on each 10XXX and 1-800 call and on matches of the ANI with the existing database of IPP line numbers. For IXCs that receive only 10XXX and 1-800 dial-around calls, the amount of the check would be the number of received dial-around calls multiplied by the per-call compensation

rate. IXC's that also receive 950 calls would add to their payment a 950 compensation payment calculated using the method described above.

F. Compensation In Non-Equal Access Areas

A per-call compensation mechanism cannot apply directly to IPPs in non-equal access areas because, in a non-equal access area, the LEC does not transmit the ANI to the IXC for dial-around calls. Therefore, IXC's are not able to track the origination of any dial-around calls in nonequal access areas. Petitioners believe that fewer than 5% of all IPPs are located in non-equal access areas. In nonequal access areas, Petitioners recommend that the Commission continue to apply the existing flat-rate compensation obligations to all IXC's.

IV. A PER-CALL COMPENSATION MECHANISM CAN AND SHOULD BE IMPLEMENTED NOW

A. Unlike The Interim Compensation Mechanism, The Per-Call Mechanism Will Be Based On Actual Traffic, Not Projections

Now that a per-call compensation mechanism is clearly feasible, there are numerous reasons why the Commission should implement such a mechanism. Unlike the interim compensation mechanism, the per-call mechanism will be based predominantly on actual traffic, not projections of average traffic. The Commission no longer need rely on the original estimates of dial-around traffic to determine the proper level of dial-around compensation. A per-call mechanism will automatically adjust compensation to

reflect current market conditions. These conditions have changed significantly since 1991, when the Commission first determined that IPP providers should be provided compensation for dial-around calls, and are likely to continue to change. Moreover, the amount of dial-around traffic varies significantly from one IPP to another based on numerous factors.

In the Rate Order, the Commission used three different approaches to establish a "range of reasonable compensation rates." The first approach examined the volume of 0+ calls versus the volume of access code calls in relation to the access charge compensation that a LEC receives in its regulated provision of payphones. Rate Order, 7 FCC Rcd at 3255. Under the second approach, the Commission used the LEC 0- transfer service charges²³ as a measure of the value to OSPs of receiving access code calls. Id. at 3256-57. The third approach relied upon AT&T's 0+²⁴

²³ The Commission defined a 0- call as follows:

A 0- call occurs when the caller dials only the digit and then waits for live operator intervention. 0- transfer service is a service offered by the LECs under which the LECs transfer a 0- call to the IXC requested by the caller.

Rate Reconsideration Order at 7152, n.9.

²⁴ The Commission defined 0+ calls as follows:

A 0+ call occurs when the caller dials [sic] plus the called telephone number. 0+ calls include credit card, collect, and third number billing calls. 0+ calls are routed to the carrier prescribed to the originating line. PPOs earn revenues, in part, by presubscribing their payphones to IXCs or OSPs that pay commission on 0+ traffic.

Id. at 7152, n.7.